IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 8290 of 2003(J)

PETITIONER:

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1. JOHNSON PLASTICS,
   MINI INDUSTRIAL ESTATE, MAMOOD, CHANGANACHERRY,
   REPRESENTED BY ITS MANAGING PARTNER.

2. M.D.JOHN, PROPRIETOR,
   EMDEES POLEMER PRODUCTS, INDUSTRIAL ESTATE,
   MEMOOD, CHANGANASSERY.

3. CYNDIS PLASTICS, NATTAKOM,
   KOTTAYAM, REPRESENTED BY ITS MANAGING PARTNER,
   C.M.PRABHU.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

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1. THE INTELLIGENCE OFFICER (IB),
   OFFICE OF THE INSPECTING ASSISTANT COMMISSIONER
   (INTELLIGENCE), DEPARTMENT OF COMMERCIAL TAXES,
   KOTTAYAM-1.

2. THE SALES TAX OFFICER,
   CHANGANASSERRY.

3. THE ADDITIONAL SALES TAX OFFICER-IV,
   SECOND CIRCLE, KOTTAYAM.

BY GOVERNMENT PLEADER G.P. SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 14390 OF 2003 IN OP 8290 OF 2003

DISMISSED

22.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF ASSESSMENT ORDER FOR THE YEAR 1994-95 ISSUED BY THE 2ND RESPONDENT TO THE FIRST PETITIONER.

EXT.P2 TRUE COPY OF ASSESSMENT ORDER FOR THE YEAR 1995-96 ISSUED BY THE 2ND RESPONDENT TO THE FIRST PETITIONER.

EXT.P3 TRUE COPY OFASSESSMENT ORDER FOR THE YEAR 1994-95 ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.

EXT.P4 TRUE COPY OF ASSESSMENT ORDER FOR THE YEAR 1995-96 ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.

EXT.P5 TRUE COPY OFASSESSMENT ORDER FOR THE YEAR 1994-95 ISSUED BY THE 2ND RESPONDENT TO THE THIRD PETITIONER.

EXT.P6 TRUE COPY OF ASSESSMENT ORDER FOR THE YEAR 1995-96 ISSUED BY THE 2ND RESPONDENT TO THE THIRD PETITIONER.

EXT.P7 TRUE COPY OF NOTICE ISSUED BY THE FIRST RESPONDENT TO THE FIRST PETITIONER DATED 14.2.2003

EXT.P8 TRUE COPY OF NOTICE ISSUED BY THE FIRST RESPONDENT TO THE 2ND PETITIONER DATED 13.2.2003

EXT.P9 TRUE COPY OF NOTICE ISSUED BY THE FIRST RESPONDENT TO THE 3RD PETITIONER DATED 14.2.2003

EXT.P10 TRUE COPY OF OBJECTION SUBMITTED BY THE FIRST PETITIONER BEFORE THE 1ST RESPONDENT DATED 6.3.2003

EXT.P11 TRUE COPY OF OBJECTION SUBMITTED BY2ND PETITIONER BEFORE THE FIRST RESPONDENT DATED 6.3.2003

EXT.P12 TRUE COP OF OBJECTION SUBMITTED BY THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT DATED 6.3.2003.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 8290 OF 2003

Dated this the 22nd day of November, 2007

JUDGMENT

Petitioners are challenging Exts. P7 to P9 notices issued to them to produce books of accounts for 1994-95 and 1995-96 on the ground that proceedings are barred by limitation. According to the petitioners, they were not retaining books of accounts relevant to the assessment years 1994-95 and 1995-96 in February 2003, when notices were issued to them. Counsel has referred to Rule 32(21) of the KGST Rules, which is as follows:

> 32. **Maintenance and Preservation of accounts.-**
>
> (1) .....
>
> (21) Accounts maintained by dealer together with all vouchers, bills, declarations, way bills and delivery notes relating to stocks, deliveries, purchases, output and sales shall be preserved by them for a period of two years from the date of completion of final assessment of the year to which they relate or from the date of disposal of the appeal or revision arising out of such assessment or from the date of completion of any other proceeding under the Act connected with such assessment or appeal or revision,

> whichever is later, and shall be kept at the place of business mentioned in the certificate of registration.

Counsel for the petitioners submitted, and it is clear from the above rule, that dealers are not bound to preserve books of accounts beyond two years from the date of completion of final assessment of the year to which they relate. If assessment is subject matter of appeal or revision, then books have to be maintained until expiry of two years from the date of disposal of the appeal or revision or from the date of completion of any proceeding under the Act connected with such assessment, appeal or revision, whichever is later. In this particular case, petitioners submitted that there is no appeal or revision or any other proceeding under the Act and the assessments produced in court vide Exts. P1 to P6 have become final. Obviously impugned notices issued are beyond the time for which petitioners are bound to preserve books of accounts. In the circumstances, O.P. is disposed of directing first respondent not to compel the petitioners for production of books of accounts for 1994-95 and 1995-96 pursuant to impugned notices issued. Since petitioners are not bound to preserve books of accounts,

at the time when notices were issued, penalty proposal contained in the notices is also quashed. However, I make it clear that even if petitioners are not bound to preserve books of accounts beyond two years, it is open to the department to collect information, compare the same with statement of accounts and returns filed by the petitioners and if the department has any material to hold that accounts produced were wrong, and the assessments based thereon are wrong, it is open to them to revise the assessments in accordance with the statute after issuing notice to the petitioners. Since O.P. was pending in this Court, respondents are free to ignore the limitation for initiating proceedings from the date of filing of OP that is 10.3.2003 till the date of production of a copy of this judgment.

(C.N. RAMACHANDRAN NAIR)
Judge